

**SEPARATE STATEMENT OF
COMMISSIONER MICHAEL J. COPPS,
DISSENTING IN PART, CONCURRING IN PART**

Re: Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers.

I have generally not opposed asking questions as the Commission has initiated several broad Notices of Proposed Rulemaking over the past few months. But when the Commission proposes conclusions that strike me as at odds with current statutory and regulatory requirements, and doesn't analyze the full implications of its decision, I must dissent.

Of course we need to ask questions to make intelligent decisions. I would therefore have been open to a balanced notice that recognized the current statutory and regulatory structure and that sought to examine our rules in light of technology evolution and the increasing convergence of services, technologies, and markets. Our interpretations of telecommunications, telecommunications services and information services need to be looked at in the context of the times and the pace of technological convergence. But before we commit ourselves, even "tentatively," to specific and potentially drastic changes to our precedent that carry with them enormous impacts in the market, we should better understand the implications of our conclusions. We have not done so here, and I fear we are out-driving the range of our headlights.

The majority frames this Notice as an exploration of the statutory classification of telecommunications, telecommunications services, and information services. But what we are really deciding is whether the transmission component for broadband services, including for Internet access, should be offered outside of the statutory framework that applies to telecommunications carriers. This is an enormously far-reaching decision and I, for one, am nowhere near ready to go there, even tentatively.

Our responsibility is to implement the statute as Congress intended. Yet, in reaching its tentative conclusions, the majority fails to analyze our previous determinations that reached a contrary result.¹ By doing so, some may assume the Commission has made up its mind and proceed to basing their conduct on these tentative conclusions.

Moreover, taken to its logical end, the majority's reading of the statute appears to lead to the strange conclusion that Congress intended to remove these services from the numerous competition, universal service, and consumer protection provisions that

¹ See, e.g., *Policy and Rules Concerning the Interstate, Interexchange Market*, 16 FCC Rcd 7418 (2001); *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 13 FCC Rcd 24012 (1998); *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer III)*, 104 FCC 2d 958 (1986); *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer II)*, 77 FCC2d 384 (1980); see also *Independent Data Communications Manufacturers Association, Inc.*, 10 FCC Rcd 13717 (1995).

Congress imposed on common carriers providing telecommunications services. I'm not ready to tell Congress that either – not tentatively nor even conjecturally. For example, the majority notes that incumbents must provide unbundled elements to competitors for the purpose of providing a telecommunications service. Does this mean that under the majority's proposal competitors would not be able to obtain network elements to provide broadband Internet access? Would the majority's conclusion undermine access for the millions of Americans with disabilities, as Congress required in section 255? Would carriers be excused from Congress' privacy rules, thereby allowing carriers to sell and use customer information with impunity? The list goes on and on. Would slamming protections under section 258 be lost for these services? Would the rate averaging and rate integration requirements that are so important to rural consumers be threatened? These and numerous other protections in the Act hinge on the provision of a telecommunications service. Do we really need to go so far down the road with this notice as the majority proposes? U-turns are almost always dangerous, and tentative U-turns can sometimes be the most collision-inducing.

I don't pretend to have all of the answers to the troubling questions raised by the Notice. Nor do I pretend to have all of the questions that need to be asked. But I have enough of them to suggest that we're not ready to go so far as this notice takes us.

I will concur in one section of this Notice, simply to ensure that the universal service questions have sufficient support to be raised. The Notice does seek comment on the impact of its decision on a critical component of the public interest -- how to preserve and advance universal service as Congress directed. While I disagree with the context in which the questions are raised, I would not want to see this Notice go forward without raising questions that would not otherwise be raised about the impact of the Commission's proposal and how we can continue to meet the statutory goals of universal service. As the Commission moves forward with all of the proceedings initiated in the past months, we must be careful that our commitment to universal service never wavers.

Moreover, as we address these questions, we need to work closely with our state colleagues and the Joint Board in particular. It is time we recognize fully that the states are partners in our efforts to advance universal service.

Setting competition policy is the jurisdiction of Congress. I hope that as we move forward, we will be focused on the Congressional directive to promote competition. I fear that the Commission's tentative conclusions today may be read by some as leading down a different road.

For the foregoing reasons, I dissent in part and concur in part.